

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY  
COMPANY,**

**Petitioner,**

**v.**

**STATE OF ILLINOIS,  
DEPARTMENT OF  
TRANSPORTATION, CITY OF  
AURORA, ILLINOIS and AURORA  
TOWNSHIP, ILLINOIS,**

**Respondent.**

**No. T-03-0072**

**RECEIVED**  
SEP 25 2003

Illinois Commerce Commission  
RAIL SAFETY SECTION

**MOTION TO STRIKE AND IN THE ALTERNATIVE  
RESPONSE TO PETITION AND AFFIRMATIVE DEFENSE**

NOW COME the CITY OF AURORA, ILLINOIS, hereinafter "Aurora" and AURORA TOWNSHIP, ILLINOIS, hereinafter , "the Township" Respondents in the above captioned matter and for their Motion to Strike and IN THE ALTERNATIVE, Response to Petition and Affirmative Defense, state as follows:

**MOTION TO STRIKE**

The City of Aurora, Illinois and Aurora Township, Illinois for their Motion to Strike pursuant to 83 ILL Adm. Code 200.190, state as follows:

1. That the Burlington Northern and Santa Fe Railway Company, hereinafter referred to as "BNSF", has filed a Petition in the Illinois Commerce Commission, hereinafter sometimes

referred to as the “ICC” requesting the entry of an Order abolishing and permanently closing the at grade crossing located at the intersection of McClure Road and the trackage of BNSF at milepost 35.2, DOT NO. 079 554A, hereinafter sometimes referred to as “the crossing”.

2. That in support of the aforesaid relief, the BNSF concludes at paragraph 7 of the Petition that “... the public convenience and necessity no longer require the existence of the aforesaid at grade crossing and public safety would be enhanced with the closure of the at grade crossing.”.

3. That Title 92: Transportation: Chapter III, Illinois Commerce Commission, Subchapter C: Rail Carriers, Part 1536 Grade Crossing Closure and Opening, provides at Section 1536.10(a) that a party may petition the Commission to close an at grade crossing and at subparagraph (b) provides that the petition filed “shall” include certain information described in 11 subparagraphs contained within subsection (b).

4. That the Petition filed in the above captioned matter contains no reference to Part 1536 Grade Crossing Closure and Opening and further fails to provide any information required by Section 1536.10(b) and specifically described in the aforesaid 11 subparagraphs.

5. That McClure Road is a paved public highway running in a generally northerly southerly direction and is traversed by the BNSF tracks at the crossing.

6. That the crossing and the premises located north of the aforesaid tracks is in the City of Aurora, Kane County, Illinois.

7. That the aforesaid area located in the City of Aurora is serviced by the City of Aurora including, but not limited to, the Aurora Fire Department and the Aurora Police Department and other municipal departments of the City of Aurora.

8. That the premises south of and adjoining the aforesaid crossing lies within Kane County, Illinois and the Township, and said premises are serviced by the Township and the municipal departments operated by the Township, and by Kane County, Illinois, including but not necessarily limited to services provided by the Sheriff of Kane County, Illinois and by the Mocherville Fire Department, an independent unit of government.

9. That neither Kane County Illinois nor the Mocherville Fire Department have been made a party to these proceedings.

10. That any decision by the ICC on the aforesaid Petition of the BNSF may adversely effect the interest of Kane County, Illinois and the Mocherville Fire Department.

11. That Kane County, Illinois and the Mocherville Fire Department should be made parties to these proceedings, be given notice and the opportunity to respond.

WHEREFORE, the Respondents, THE CITY OF AURORA, ILLINOIS and THE TOWNSHIP OF AURORA, ILLINOIS, pray that the Petition filed in the above captioned matter on behalf of the BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY be dismissed.

AND IN THE ALTERNATIVE

**RESPONSE TO PETITION**

NOW COME the Respondents, THE CITY OF AURORA, ILLINOIS and THE TOWNSHIP OF AURORA, ILLINOIS and for their Response to Petition state as follows:

1. That they admit the allegations contained in paragraph 1 of the aforesaid Petition.
2. That they admit the allegations contained in paragraph 2 of the aforesaid Petition.
3. That they admit the allegations contained in paragraph 3 of the aforesaid Petition.
4. That they admit the allegations contained in paragraph 4 of the aforesaid Petition.
5. That they admit the allegations contained in paragraph 5 of the aforesaid Petition.
6. That they admit the allegations contained in paragraph 6 of the aforesaid Petition.

7. That they deny the allegations contained in paragraph 7 of the aforesaid Petition.

WHEREFORE, the Respondents, THE CITY OF AURORA, ILLINOIS and THE TOWNSHIP OF AURORA, ILLINOIS pray that the Petition filed in the above captioned matter on behalf of the BURLINGTON NORTHERN and SANTA FE RAILWAY COMPANY be denied.

### **AFFIRMATIVE DEFENSE**

NOW COME the Respondents, THE CITY OF AURORA, ILLINOIS and THE TOWNSHIP OF AURORA, ILLINOIS and for their Affirmative Defense to the Petition filed in the above captioned matter by the BURLINGTON NORTHERN and SANTA FE RAILWAY COMPANY state as follows:

1. That BNSF, has caused to be filed in the above captioned matter a Petition praying that the ICC enter an order abolishing and permanently closing the crossing.

2. In its aforesaid Petition, the BNSF concludes at paragraph 7 that "... the public convenience and necessity no longer require the existence of the aforesaid at grade crossing and public safety would be enhanced with the closing of the aforesaid at grade crossing."

3. That the Township opposes closing of the aforesaid crossing.

4. That the Township uses the aforesaid at grade crossing for access to areas

located within the Township for the delivery of services which said Township is required by statute to provide.

5. That the closing of the crossing will greatly impede the Township in the delivery of required services and the performance of necessary duties.

6. That the City of Aurora, by resolution, a copy of which is attached hereto marked as Exhibit A, opposes closing of the crossing and requests the ICC to deny the aforesaid Petition.

7. That the City of Aurora refused to agree to the aforesaid closing in 2002.

8. That closing of the aforesaid crossing would greatly impede the orderly flow of traffic in the area, and further, said closing would delay the delivery of emergency services such as police and fire protection in the area.

9. That attached hereto marked Exhibit B is a document entitled Fire Districts and Fire Stations.

10. That the City of Aurora provides fire protection, ambulance service, police service and other municipal services to the shaded area as well as the area identified as "Marywood".

11. That the area designated as “Mocherville” is serviced by the Mocherville Fire Protection District, an independent unit of government, not associated with the City of Aurora.

12. That pursuant to a mutual aid agreement between Aurora and Mocherville, each party agrees to assist the other in emergencies.

13. That the Mocherville Fire Protection District may be adversely affected, by any decision herein, further, the Mocherville Fire Protection District should be made a party to these proceedings, be given notice and the opportunity to be heard.

14. That attached hereto marked Exhibit C is a copy of an aerial map of a portion of the City of Aurora and surrounding unincorporated areas.

15. That those areas surrounded by white borders are unincorporated, further, said areas are served by Kane County and the Kane County Sheriff’s Department.

16. That Kane County, Illinois should be made a party to these proceedings, should be given notice and should be given the opportunity to respond.

17. That closing of the crossing will greatly affect access for the delivery of emergency or other municipal services to either side of the crossing.

18. That the closing of the crossing would greatly impede the orderly flow of traffic in the area.

19. That closing of the crossing would eliminate the safest alternative as a detour in the event of the closing of streets in the area.

20. That closing of the crossing would eliminate the safest and best access for delivery of emergency services to the railroad yards at the McClure Road crossing.

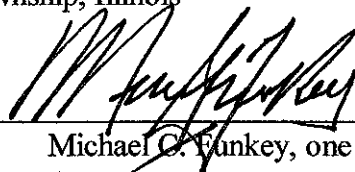
21. That subsequent to the construction of the crossing, numerous business have been started in the area.

22. That closing of the crossing would greatly impede the orderly flow of traffic in the area.

WHEREFORE, the Respondents, THE CITY OF AURORA, ILLINOIS and THE TOWNSHIP OF AURORA, ILLINOIS pray that the Petition be denied.

LAW OFFICES OF MICHAEL C. FUNKEY, P.C.,  
Attorneys for the City of Aurora, Illinois and Aurora  
Township, Illinois

By



Michael C. Funkey, one of Respondents'  
Attorneys

Law Offices of Michael C. Funkey, P.C.  
2111 Plum Street, Suite 301  
Aurora, IL 60506  
(630) 897-4284



**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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<b>THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No.</b>
<b>STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, CITY OF AURORA, ILLINOIS and AURORA TOWNSHIP, ILLINOIS,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

To:    See Attached service list

PLEASE TAKE NOTICE that on the 24th day of September 2003, we filed with the Chief Clerk of the Illinois Commerce Commission, an Appearance and a Motion to Strike and In the Alternative Response to Petition and Affirmative Defense in the above captioned matter.

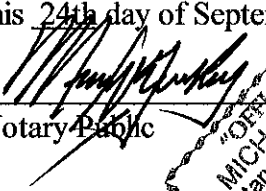
LAW OFFICES OF MICHAEL C. FUNKEY, P.C.  
Attorneys for the City of Aurora, Illinois and Aurora  
Township, Illinois

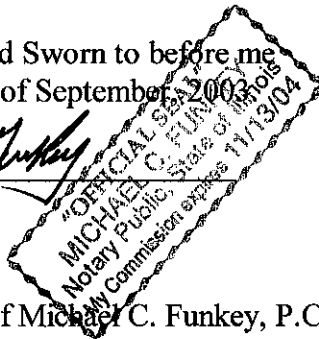
By  \_\_\_\_\_  
One of their Attorneys

**CERTIFICATE OF SERVICE**

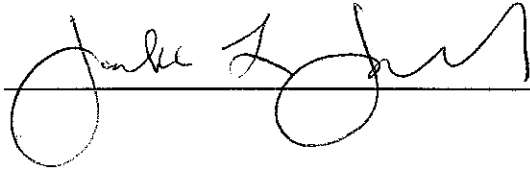
I do hereby certify that on the 24th day of September, 2003, I served a copy of the foregoing Notice of Filing, together with the documents referred to therein upon the parties to whom it was addressed at the addresses indicated by causing the same to be deposited in the Federal Express drop box at 2111 Plum St., Aurora, IL, postage prepaid.

Subscribed and Sworn to before me  
this 24th day of September, 2003.

  
Notary Public



Law Offices of Michael C. Funkey, P.C.  
2111 Plum St., Suite 301  
Aurora, IL 60506  
(630) 897-4284

  
\_\_\_\_\_

**Service List**  
**BNSF v. State of Illinois, DOT, City of Aurora,**  
**Aurora Township, Illinois**

**Via Federal Express #839678504564**

Mr. Henry Humphries  
Railroad Section  
Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield, IL 62701

**Via Federal Express #839678504553**

Mr. James L. Easterly  
Director, Division of Highways  
Illinois Department of Transportation  
2300 S. Dirksen Pkwy, Suite 300  
Springfield, IL 62764

**Via Federal Express #839678504542**

Attorney Michael L. Sazdanoff  
Kenneth J. Wysoglad & Associates  
118 S. Clinton St., Suite 700  
Chicago, IL 60661

**Via Federal Express #839678504574**

The Honorable June Tate  
Administrative Law Judge  
Illinois Commerce Commission  
State of Illinois Building  
160 N. LaSalle St., Suite C-800  
Chicago, IL 60601

CITY OF AURORA, ILLINOIS  
RESOLUTION NO. \_\_\_\_\_  
DATE OF PASSAGE \_\_\_\_\_

**A RESOLUTION OPPOSING THE PROPOSED CLOSING  
OF THE McCLURE ROAD RAILROAD CROSSING  
BY THE BURLINGTON NORTHERN SANTA FE RAILROAD**

WHEREAS, the City of Aurora ("City") has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the Burlington Northern Santa Fe Railroad ("Burlington") has petitioned the Illinois Commerce Commission ("ICC") to permanently close the grade crossing at McClure Road; and

WHEREAS, the City denied the Burlington's request in June 2002 to enter into an agreement to permanently close the McClure Road grade crossing; and

WHEREAS, the City is greatly concerned that the permanent closing of the McClure Road grade crossing will adversely effect traffic flow in the area, particularly when the Farnsworth Avenue bridge is closed due to accidents or repairs; and

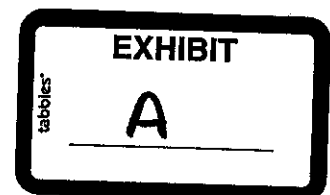
WHEREAS, the City is also concerned that the permanent closure of said grade crossing will increase the response time by the police and fire personnel to emergency calls in the area.

NOW, THEREFORE, BE IT RESOLVED, that City Council of the City of Aurora, Illinois, hereby requests the ICC to deny the Burlington's petition to permanently close the McClure Road grade crossing.

PASSED AND APPROVED by the City Council of the City of Aurora, Illinois on \_\_\_\_\_.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

AYES \_\_\_\_\_ NAYS \_\_\_\_\_ ABSENT \_\_\_\_\_



ATTEST:

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City Clerk

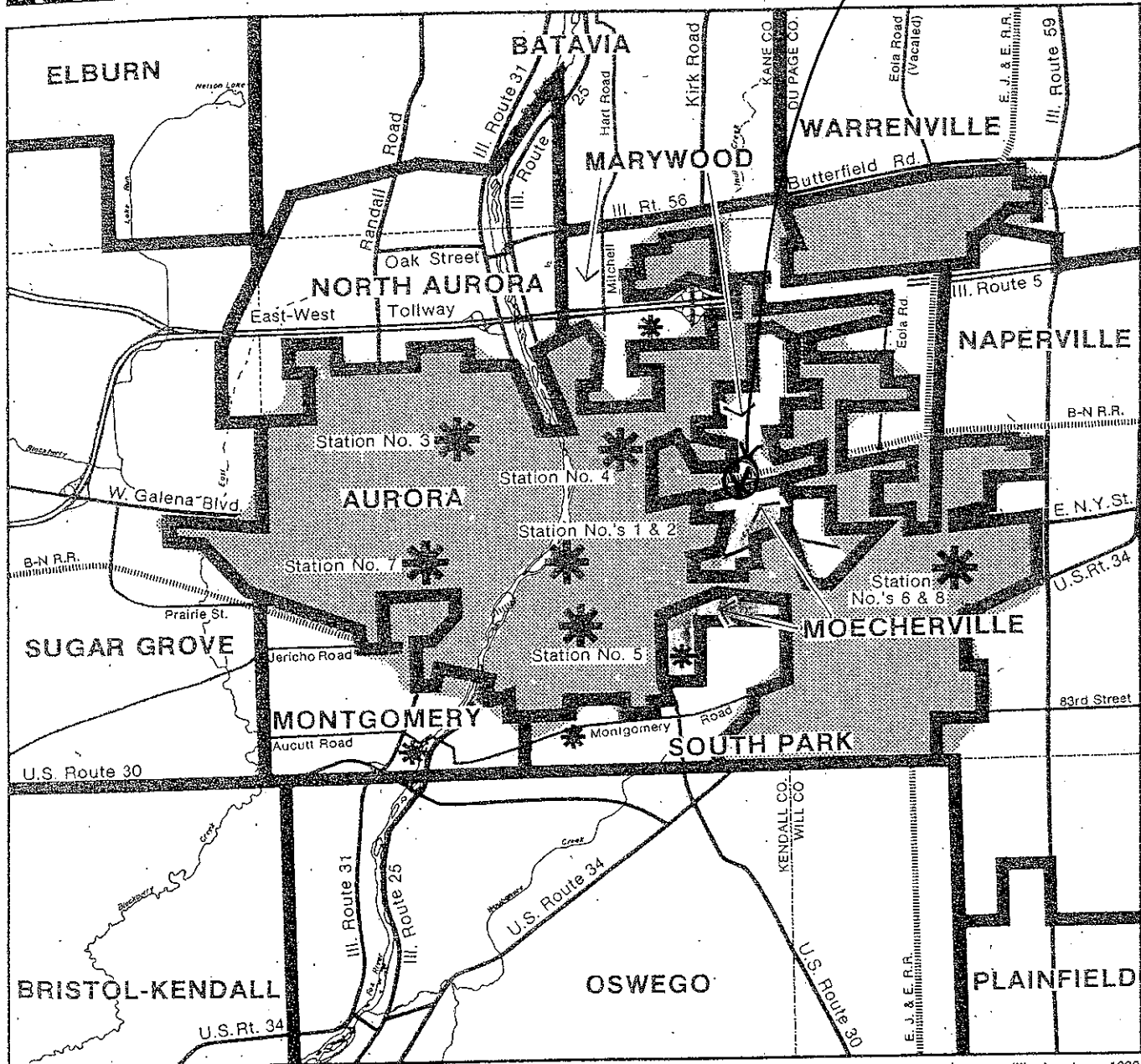
City of Aurora  
Law Department  
44 East Downer Place  
Aurora, IL 60607  
(630) 844-4731

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Mayor

# FIRE DISTRICTS AND FIRE STATIONS

-  CITY OF AURORA FIRE STATION
-  FIRE DISTRICT BOUNDARIES
-  AREA FIRE STATIONS
- AURORA** FIRE DISTRICT



Source: Department of City Planning, Aurora, Illinois • June, 1980.

## CITY OF AURORA • COMMUNITY INVENTORY

City of Aurora Planning Department • 44 East Downer Place • Aurora, Illinois 60009  
 Greater Aurora Chamber of Commerce • 40 West Downer Place • Aurora, Illinois 60009

EXHIBIT

B

McClure Road Railroad Crossing Exhibit

